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**SooperKanoon Citation :** [sooperkanoon.com/516489](http://sooperkanoon.com/516489)

**Court :** Jharkhand

**Decided On :** Mar-14-2008

**Reported in :** [2008(2)JCR491(Jhr)]

**Judge :** M.Y. Eqbal, J.

**Appellant :** Kinkar Mandal and ors.

**Respondent :** Eastern Coal Fields Ltd.

**Disposition :** Application allowed

**Judgement :**

**M.Y. Eqbal, J.**

1. This application under Article 227 of the Constitution of India is directed against the order dated 16.5.2006 passed by Additional Munsif 2nd at Dhanbad in Title Suit No. 48 of 2003 whereby defendants/petitioners' application for acceptance of show cause filed by them be treated as written statement has been rejected and further for quashing the order dated 31.12.2005 by which petition filed by the defendants/petitioner Nos. 2 to 5 for recall of the order dated 17.3.2005 was also rejected as time barred.

2. The facts of the case lie in a narrow compass:

The plaintiff-respondent filed Title Suit No. 48 of 2003 for a decree of permanent injunction restraining the defendants, their servants and agents from interfering in any manner with the mining operation carried over in the suit land. On being summoned, the petitioners, who are defendant Nos. 2 to 5, appeared and filed show cause to the injunction application filed by the plaintiff under Order XXXIX, Rules 1 and 2 of the CPC. The petitioners' case is that since the injunction matter was being considered by the Court, the petitioners could not file written statement as a result of which, they were debarred from filing written statement by order dated 17.3.2005. The petitioner's filed application for recall of the order, but the Court below rejected the application by passing the impugned order dated 3.12.2005. The petitioners thereafter filed an application on 16.1.2006 and prayed to the Court to accept the show cause filed by them and treat the show cause as written statement. The said application was rejected by the Court below.

3. I have heard the learned Counsel appearing for the parties.

4. From perusal of the orders, it appears that the Court below was of the view that although show cause may be treated as written statement, but application for treating the show cause as written statement should have been filed by the petitioners before they were debarred from filing written statement. The Court below was also of the view that since the show cause does not fulfil the requirement of Order XIX, Rules 1 and 2, CPC, I cannot be treated as written statement.

5. It is not in dispute that after the summons of the suit issued to the defendants, they immediately appeared in the suit. However, since notice of injunction application was served upon the defendants, they filed show cause to the injunction application. The Court thereafter proceeded to dispose of the injunction application. The defendants, however, could not file written statement within the time allowed by the Court which resulted in debarring the petitioner from filing written statement. The petitioners, thereafter, filed an application for recall of the order and for allowing the petitioners to file written statement that was also rejected. The petitioners thereafter filed an application for treating the show cause as written statement which was rejected by the impugned order. In this way, it is

evidently clear that the petitioners were all along prosecuting the case. It is not a case where in spite of service of summons, the defendants neither appeared nor took any step in the suit for filing written statement.

6. Considering the aforesaid facts, the Court below ought to have allowed the petitioners to file written statement when prayer of the petitioners for treating the show cause as written statement was rejected. The impugned orders passed by the Court below, therefore, cannot be sustained in law.

7. For the reasons aforesaid, this application is allowed. The impugned orders are set aside. Consequently, the petitioners are allowed to file written statement. However, it is made clear that if the petitioners file written statement within two weeks from today, the Court below shall accept the same and proceed with the hearing of the suit.

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